

ESTTA Tracking number: **ESTTA585084**

Filing date: **01/31/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214191
Party	Defendant Boston Iced Tea Company, Inc.
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Date	01/31/2014
Attachments	Boston Iced Tea Answer to Opp FINAL 013114.pdf(30081 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>BBK PICTURES, INC.,</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">vs.</p> <p>BOSTON ICED TEA COMPANY, INC.,</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No. : 91214191 Mark : MAGUIRE’S BOSTON ICED TEA Application Serial No. : 85/884,091</p>
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**ANSWER AND AFFIRMATIVE DEFENSES**

Applicant, Boston Iced Tea Company, Inc., ("Applicant"), by and through undersigned counsel, hereby responds to the Notice of Opposition of BBK Pictures, Inc. ("Opposer") as follows:

1. Applicant admits that Opposer is a corporation duly organized, incorporated and existing under the laws of the Commonwealth of Pennsylvania, having a place of business at 404 North 19th Street, Philadelphia, Pennsylvania 19130.
2. Applicant admits that Applicant is a corporation duly organized and existing under the laws of the State of Delaware, having a place of business at 924-A Chapala Avenue, Santa Barbara, California 93101.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Notice of Opposition, and therefore denies the allegations.
4. Applicant lacks knowledge or information sufficient to form a belief as to the

truth of the allegations in paragraph 4 of the Notice of Opposition, and therefore denies the allegations.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Notice of Opposition, and therefore denies the allegations.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Notice of Opposition, and therefore denies the allegations.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Notice of Opposition, and therefore denies the allegations.

8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Notice of Opposition, and therefore denies the allegations.

9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Notice of Opposition, and therefore denies the allegations.

10. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Notice of Opposition, and therefore denies the allegations.

11. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Notice of Opposition, and therefore denies the allegations.

12. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Notice of Opposition, and therefore denies the allegations.

13. Applicant denies the allegations in paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations in paragraph 13 of the Notice of Opposition.

15. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Notice of Opposition, and therefore denies the allegations.

16. Applicant denies the allegations in paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations in paragraph 17 of the Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

Further answering the Notice of Opposition herein, Applicant avers as affirmative defenses that:

18. Opposer fails to state a viable claim against Applicant.

19. Opposer lacks standing to proceed in Opposition to Applicant's registration.

20. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar.

21. The Opposer's mark is primarily geographically deceptively misdescriptive.

22. Opposer will not be harmed by the registration of Applicant's mark.

23. One or more of Opposer's claims are barred by the equitable defenses of laches, acquiescence, waiver, or estoppel.

24. Applicant hereby gives notice that it may rely on any other affirmative defenses that may become available or appear proper during discovery, and hereby reserves its right to

amend this Answer to assert any such defenses.

WHEREFORE, Applicant, having fully and completely answered the Notice Of Opposition, Hereby prays that the Opposition be denied.

Dated: January 31, 2014

FOLEY BEZEK BEHLE & CURTIS, LLP

/Roger N. Behle, Jr./

Roger N. Behle, Jr.

Attorney for Applicant

Boston Iced Tea Company, Inc.

# CERTIFICATE OF SERVICE

It is hereby certified that on the 31st day of January, 2014, the foregoing ANSWER AND AFFIRMATIVE DEFENSES was served on Applicant by sending a copy thereof to:

BBK PICTURES, INC.  
404 North 19th Street  
Philadelphia, PA 19130  
UNITED STATES

Dina Leytes  
GRIESING LAW, LLC  
1717 Arch Street Suite 3630  
Philadelphia, PA 19103  
UNITED STATES  
Phone: 215-732-3924  
[dleytes@griesinglaw.com](mailto:dleytes@griesinglaw.com)

Opposer, by first-class, postage-prepaid mail. Electronic copies were also served via email.

Dated: January 31, 2014

FOLEY BEZEK BEHLE & CURTIS, LLP

/Roger N. Behle, Jr./  
Roger N. Behle, Jr.  
Attorney for Applicant  
Boston Iced Tea Company, Inc.